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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/825,166	04/16/2004	Warren J. Grosjean		8278

7590 12/05/2005  
WARREN J. GROSJEAN  
32 JUNIPER RD.  
WAYNE, NJ 07470-6156

EXAMINER

LEE, JONG SUK

ART UNIT PAPER NUMBER

3673

DATE MAILED: 12/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/825,166	<b>Applicant(s)</b> GROSJEAN, WARREN J.	
	<b>Examiner</b> Jong-Suk (James) Lee	<b>Art Unit</b> 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 September 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 3-11 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10 and 11 is/are allowed.
- 6) ☒ Claim(s) 1 and 3-6 is/are rejected.
- 7) ☒ Claim(s) 7-9 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. The amendment filed September 19, 2005 has been entered.

#### *Specification*

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: “a plurality of transverse, **flexible** hollow plastic tubes” in claim 10, lines 6-7.

With respect to applicant’s argument that the tube has been flexible in order to be fit to the contours of the ditch, it is not persuasive because the tube can be short segments which are connected together with a joint and be fitted to the contours of the ditch without being flexible. The word, “flexible” is not mentioned in the specification.

#### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 3, 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over by

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Ehrlich et al (US 6,428,240).

Ehrlich discloses a sectional interlocking sand bags comprising a strip (10) of polyethylene plastic of width and having a specific gravity of one or less, a plurality of transverse hold down means (12, 16) being filled with sand (col.2, lines 10-12), either integral with or fixed to the strip of plastic, running the entire width of the strip of plastic and spaced therebetween, the polymeric/plastic strip having an inherent toughness for withstanding the abrasive action of water and sharp rocks (see Figs. 1-5; col.2, lines 6-57).

With respect to the dimension of the strips and the spacing for the hold down members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the size of the strips in order to fit to the desired installation site conditions.

With respect to the hot melted glue for the sand, an artisan within the ordinary skill in the art would have added conventional hot glue to the sand for bonding the sand within the bags.

5. Claims 1 and 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heine et al (US 3,696,623).

Heine et al discloses a woven mat comprising a strip (1, 3) of polyethylene plastic of width and having a specific gravity of one or less, a plurality of transverse hold down means (2) being filled with thermoplastic material (2b), either integral with or fixed to the strip of plastic, running the entire width of the strip of plastic and spaced therebetween, the polymeric/plastic strip having an inherent toughness for withstanding the abrasive action of water and sharp rocks, the plurality of hold down means being tubes (2a) filled with any of variety of heavier than water materials such as thermoplastics (see Figs. 1-4; col.3, lines 3-63; col.4, lines 1-18).

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With respect to the dimension of the strips and the spacing for the hold down members, it would have been obvious to one of ordinary skill in the art at the time the invention was made to change the size of the strips in order to fit to the desired installation site conditions.

***Response to Arguments***

6. Applicant's arguments with respect to amended claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Allowable Subject Matter***

7. Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Claims 10-11 would be allowable over the prior art of record.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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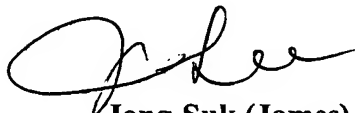
will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jong-Suk (James) Lee whose telephone number is (571) 272-7044. The examiner can normally be reached on 6:30 am to 3:00 pm, Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather C. Shackelford can be reached on (571) 272-7049. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

J. Lee /jjl  
November 29, 2005



**Jong-Suk (James) Lee**  
**Primary Examiner**  
**Art Unit 3673**